

FACTUAL HISTORY

On September 15, 2011 appellant, then a 38-year-old federal air marshal, filed a traumatic injury claim alleging that on August 31, 2011, during defensive measures, he stepped backwards from the mat onto the carpet and slipped, thereby sustaining a hyperextended right Achilles tendon (sprain). On November 2, 2011 OWCP accepted his claim for sprain of the right ankle. On November 29, 2011 it further accepted appellant's claim for rupture of right Achilles tendon and contracture of right tendon (sheath). On December 1, 2011 appellant underwent a debridement of tendon with flexor hallucis longus transfer; and c-arm to assess adequacy to placement for the tendon transfer.

In a May 17, 2013 report, Dr. Allan H. Macht, a Board-certified surgeon, noted that he examined appellant on May 13, 2013, that he reached maximum medical improvement on April 1, 2012, and found an eight percent impairment of the right lower extremity. Applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), he noted that appellant sustained an injury to his right ankle with a torn Achilles tendon and had surgery to correct that condition. Dr. Macht noted that using Table 16-6 on page 516 of the A.M.A., *Guides*, there is a grade modifier of 1 for functional history adjustment score. Using Table 16-7 on page 517, he found a grade modifier 2 for physical examination score due to atrophy. Dr. Macht stated that the clinical studies confirmed the diagnosis per Table 16-8 on page 519 with a grade modifier 1 for clinical studies adjustment score. Using the foot and ankle regional grid of Table 16-2 on page 501 of the A.M.A., *Guides*, he noted a class 1 impairment of appellant's foot and ankle with mild motion deficit. The D column was selected based on the adjustment and Dr. Macht found that appellant had a six percent impairment of the leg per the A.M.A., *Guides* for the Achilles tendon rupture. Dr. Macht further noted that the physician that operated on appellant selected a graft from the great toe which is less than with limited motion of the distal joint. He assigned two percent impairment of the right lower extremity per Table 16-19 on page 549 for this additional factor. Dr. Macht noted that this combined with the previous impairment due to the Achilles tendon rupture to yield a total eight percent permanent impairment of the right lower extremity.

On September 12, 2013 appellant filed a claim for a schedule award.

In a September 12, 2013 report, OWCP's medical adviser reviewed appellant's file and determined that he had a four percent impairment of the right lower extremity. He indicated that he concurred with Dr. Macht regarding the two percent impairment for the great toe pursuant to Table 16-19 of the A.M.A., *Guides*. However, the medical adviser disagreed with the impairment for the ankle. He noted that Dr. Macht stated that there was six percent impairment due to the ruptured tendon with mild motion deficit. However, the medical adviser noted that the only range of motion submitted for the ankle is for inversion which he stated was limited to 25 degrees. He noted that Table 16-20, page 549, of the A.M.A., *Guides* gives a mild impairment of 10 to 20 degrees of inversion and no impairment for greater than 20 degrees of inversion, and that as such, based on the A.M.A., *Guides*, 25 degrees of inversion would not equate to a motion deficit. The medical adviser also noted that the ankle impairment would fall under the category of palpatory findings and/or radiographic findings. He stated that using the same and appropriate class 1, grade D category, this would give a two percent permanent impairment of the right lower extremity based on the ruptured Achilles tendon. The medical adviser concluded that the two

percent impairment for the ankle combined with the two percent impairment for the limited hallux flexion gives a total of four percent permanent impairment of the right lower extremity. He found that the date of maximum medical improvement was December 1, 2012, or one year from the date of repair of the right Achilles tendon.

By decision dated October 22, 2013, OWCP issued a schedule award for a four percent impairment of the right lower extremity.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations² set forth the number of weeks of compensation payable to employee sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.³ For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating scheduled losses.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁷ The sixth edition of the A.M.A., *Guides* also provides that range of motion may be selected as an alternative approach in rating impairment under certain circumstances. A rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.⁸

² 20 C.F.R. § 10.404.

³ *Linda R. Sherman*, 56 ECAB 127 (2004); *Daniel C. Goings*, 37 ECAB 781 (1986).

⁴ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 494-531.

⁷ *Id.* at 521.

⁸ *L.B.*, Docket No. 12-910 (issued October 5, 2012).

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.⁹

ANALYSIS

OWCP accepted appellant's claim for sprain of the right ankle, rupture of the right Achilles tendon and contracture of the right tendon. It issued a schedule award for a four percent impairment of the right lower extremity based on the opinion of the medical adviser. Appellant's counsel argues that the award should be for eight percent impairment as stated in the opinion of Dr. Macht.

The Board notes that both Dr. Macht and the medical adviser agree that appellant is entitled to two percent impairment for the great toe. The Board finds that pursuant to Table 16-19 of the A.M.A., *Guides*, appellant is entitled to a two percent impairment of the left lower extremity for a mild impairment to his greater toe.¹⁰ However, Dr. Macht and the medical adviser disagree with regard to appellant's impairment rating due to the accepted injury to his right ankle. He indicated that, pursuant to the foot and ankle grid at Table 16-2 of the A.M.A., *Guides*, appellant had a class 1 impairment of his foot and ankle based on mild motion deficit. However, the medical adviser found that Dr. Macht improperly made his classification based on a mild motion deficit. He noted that Dr. Macht indicated that appellant had inversion of the right ankle limited to 25 degrees and that pursuant to Table 16-20 of the A.M.A., *Guides*,¹¹ to find a mild impairment for inversion, there must be 10 to 20 degrees of inversion. Accordingly, the medical adviser properly concluded that appellant should be evaluated pursuant to the criteria for palpatory findings and/or radiographic findings, which utilizes different figures under Table 16-2 of the A.M.A., *Guides*. He did not disagree with the grade modifiers as set by Dr. Macht of 1 for functional history, 2 for physical examination and 1 for clinical studies. When one applies the formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) or (1-1) + (2-1) + (1-1) = 1, the rating column is moved one to the right, and accordingly, the proper column on Table 16-2 is column D, as agreed by both physicians. When one applies the figures for palpatory findings and/or radiographic findings as the medical adviser properly did, the rating for column D is two percent, not the six percent found by Dr. Macht improperly based on mild motion deficits. Combining the two percent ankle impairment with the two percent impairment due to her great toe, the medical adviser properly determined that appellant had a four percent impairment of the right lower extremity.¹²

It is well established that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of

⁹ Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.808.6(d) (August 2002); *see also D.H.*, Docket No. 12-1857 (issued February 26, 2013).

¹⁰ A.M.A., *Guides* 549, Table 16-19.

¹¹ *Id.* at 549.

¹² *See id.* at 606, Combined Values Chart.

its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.¹³ The Board finds that the findings and conclusions of the medical adviser constitute the weight of the medical evidence through the proper application of the A.M.A., *Guides* and establish that appellant has no more than a four percent impairment of the right lower extremity for which he has received a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not establish that he was entitled to a schedule award greater than four percent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2013 is affirmed.

Issued: June 26, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹³ *Linda Beale*, 57 ECAB 429 (2006); *see also E.S.*, Docket No. 11-1162 (issued November 17, 2011).